

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

SIERRA CLUB,

Plaintiff,

v.

CITY OF HOLLAND, MICHIGAN, and
HOLLAND BOARD OF PUBLIC WORKS

Defendants.

Civil Action No. 1:08-cv-1183

Paul L. Maloney
Chief U.S. District Judge

**DEFENDANTS' MOTION FOR
TOTAL SUMMARY JUDGMENT AS TO ALL PSD CLAIMS**

Defendants City of Holland and Holland Department of Public Works (collectively, "Holland") hereby move this Court for summary judgment pursuant to Fed. R. Civ. P. 56, finding that, as a matter of law:

(1) Plaintiff Sierra Club's ("Plaintiff") claims in Counts I, III, IV and VI of its Amended Complaint (Doc. 16) are barred by the applicable statute of limitations in 28 U.S.C. § 2462 for all projects at issue in this litigation, specifically:

- Project 1: 1988, Unit 4 replacement of waterwall tubes;
- Project 2: 1988, Unit 3 installation of snow melt system;
- Project 4: 1990, Unit 5 replacement of economizer tubes and generating tubes and 1990, Unit 5 replacement of waterwall tubes;
- Project 5: 1993, Unit 3 replacement of condenser tubes;
- Project 6: 1991, Unit 4 replacement of condenser tubes;
- Project 7: 1996, Unit 3 replacement of superheater tubes;
- Project 8: 1996, Units 4 and 5 installation of water dilution pipeline;
- Project 9: 1997, Unit 4 replacement of superheater tubes; and
- Project 10: 2000, Unit 5 replacement of condenser tubes.

(2) Plaintiff did not provide the requisite 60-days advance notice under 42 U.S.C. § 7604(b), as to its Best Available Control Technology (“BACT”) claims in Count III of its Amended Complaint for the Projects 2, 4, 6, 7, 8 and 10, requiring dismissal of these claims.

(3) Projects 5 and 10 did not involve a physical change or change in method of operations to an “emissions unit,” and therefore do not require compliance with BACT, requiring dismissal of Plaintiff’s claims in Count III of its Amended Complaint as to these projects.

This Motion for Total Summary Judgment as to All PSD Claims is based upon this Motion, and Holland’s Brief in Support of its Motion for Total Summary Judgment as to All PSD Claims, and the Declarations of Andrea M. Hogan and David G. Koster and attached exhibits.

Pursuant to Local Civil Rule 7.1(d), Defendants have ascertained through discussions with Plaintiff that Plaintiff will oppose this Motion.

WHEREFORE, Holland respectfully requests that the Court grant Holland’s Motion for Total Summary Judgment as to All PSD Claims.

Dated: March 15, 2011

Respectfully submitted,

s/ Cary R. Perlman
One of the Attorneys for Defendants

Charles M. Denton
BARNES & THORNBURG LLP
171 Monroe Avenue, NW
Suite 1000
Grand Rapids, MI 49503
Telephone: (616) 742-3974
Email: charles.denton@btlaw.com
Atty. #: P33269

Cary R. Perlman
Karl A. Karg
Andrea M. Hogan
LATHAM & WATKINS LLP
233 South Wacker Drive, Ste. 5800
Chicago, Illinois 60606

Telephone: (312) 876-7700
Email: cary.perlman@lw.com
karl.karg@lw.com
andrea.hogan@lw.com